

## **REMARKS**

Applicants respectfully request consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed October 1, 2008. Claims 1-45 stand rejected. In this Amendment, claims 1, 30, 33, 39 and 42 have been amended. No claims have been canceled. No new matter has been added. Accordingly, claims 1-45 are presented for examination.

### **Rejections Under 35 U.S.C. § 102**

Claims 1-30, 32, 33, 35, 38, 39 and 41-45 are rejected under 35 U.S.C. §102(e) as being anticipated by Applicant Admitted Prior Art, (hereinafter “AAPA”) in view of Cusson, (International Publication No. WO 0063800, hereinafter “Cusson”). Cusson teaches a system that includes a cache database and a source database, wherein the cache database contains a portion of the data contained in the source database. (Cusson, col. 5, lines 44-48). In Cusson, a query is first presented to the cache database. If the cache database does not include data identified in the query, the query is sent to the source database. (Cusson, col. 5, lines 53-60). Cusson teaches that if the data identified in the query is not in the cache database, the query must be run on the source database. (Cusson, col. 9, lines 14-19). Therefore, in Cusson if the data is not in the cache database the query is always sent to the source database. Cusson does not teach determining whether the query is a new query if the data identified in the query is not in the cache. Nor does Cusson teach that the query is not sent to the source database if the query is a new query. In contrast, claim 1 recites, “to add the representation to the data record if the representation is a new representation, and to send said representation to at least one Second Tier identification server if said representation is not a new representation, wherein said representation is not sent to the at least one Second Tier identification server if said

representation is a new representation.”

Cusson further teaches a cache miss accelerator that speeds up the response time for instances when data indicated in the query is not in the cache database (provides a quick way to determine if the data is identifiable). (Cusson, col. 12, line 50 to col. 13, line 5). If the cache miss accelerator determines that the data is not in the cache database (not identifiable, a miss), the cache miss accelerator sends the query to the source database. (Cusson, col. 15, lines 13-19). Under no circumstances does the cache miss accelerator fail to send the query to the source database if a miss is indicated (if it is determined that the data is unidentifiable). This is in contrast with claim 1, which recites, “wherein said representation is not sent to the at least one Second Tier identification server if said representation is a new representation.”

For the above reasons, Cusson fails to disclose all of the features included in the following language of claim 1:

... at least one First Tier identification server to receive said representation, to determine whether said work from said representation is identifiable, to determine whether said representation is a new representation based on comparing the representation to previously received unidentified representations maintained in a data record if said work is not identifiable, wherein the representation is a new representation if the representation is not similar to a previously received unidentified representation, to add the representation to the data record if the representation is a new representation, and to send said representation to at least one Second Tier identification server if said representation is not a new representation, wherein said representation is not sent to the at least one Second Tier identification server if said representation is a new representation ...

Accordingly, Applicants respectfully submit that claim 1 and its dependent claims are patentable over Cusson and AAPA, and request that the rejection under 35 U.S.C. §102(e) be withdrawn.

Claim 30 includes the language, “if said received representation is not a new representation, sending said received representation to a Second Tier Identification server for identification, wherein said received representation is not sent to the at least one Second Tier identification server if said received representation is a new representation.” Claim 33 includes

the language, “to send said representation to said Tier N+1 server for identification if said representation is similar to one of said previously received unidentified representations, wherein if the representation is not similar to one of said previously received unidentified representations, the representation is not sent to said Tier N+1 server.” Claim 39 includes the language, “means for sending said representation to a Second Tier Identification server for identification if said representation is similar to a previously received unidentified representation, wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server.” Claim 42 includes the language, “if said representation is similar to the previously received unidentified representation, sending said received representation to a Second Tier Identification server for identification, wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server.” As discussed above, the combination of Cusson and AAPA fails to teach or disclose such limitations. Accordingly, Applicants respectfully submit that claims 30, 33, 39 and 42, and their corresponding dependent claims, are patentable over the presently cited art, and request that the rejection under 35 U.S.C. §102(e) be withdrawn.

With regards to claim 45, Examiner has indicated that the limitation of, “the at least one first tier identification server to add said representation to an index of unidentified representations if the representation is identified by the second tier identification server if said representation is not similar to any previously received unidentified representation,” is applicant admitted prior art. Applicants respectfully point out that the language identified by the Examiner is not the claim language of claim 45. Claim 45 recites, “the at least one First Tier identification server to add said representation to an index of unidentified representations if said representation is not similar to any previously received unidentified representation.” Additionally, Applicants

respectfully disagree with Examiner's assertion that the features of claim 45 are AAPA. First, Examiner is citing Applicant's own detailed description against claim 45, which is improper. Moreover, the language of Applicant's detailed description cited by the Examiner does not even discuss maintaining an index of unidentified representations. Applicants direct Examiner to, for example, pages 21 and 22 of the detailed description for such a discussion.

Regarding claims 24-27, Examiner has stated that these claims are all disclosed in AAPA. Specifically, Examiner cites page 5, lines 8-10 of the background section of the present application as disclosing the features of claims 24-27. Page 5, lines 8-10 recites, "if a match is made, typically the module 102 will keep a record of all matches made during a predetermined period of time. For example, the module 102 may keep a record of song titles detected during a 24 hour period." The cited passage discloses storing a record of matches. The cited passage does not disclose providing representations to an ID server, much less providing representations to an ID server at any predetermined time interval. Nor does the background section of the current application elsewhere describe such features. Accordingly, Applicants respectfully submit that the features of claims 24-27 are not disclosed by AAPA, and request that Examiner remove the rejection to claims 24-27 or provide a reference that teaches the features recited in these claims.

Regarding claim 28, Examiner has stated that this claim is disclosed in AAPA. Specifically, Examiner cites page 2, lines 1-5 of the background section of the present application as disclosing the features of claim 28. The cited passage discloses receiving a media stream. The cited passage does not disclose providing representations to an ID server, much less providing representations to an ID server based on an out of band event. Nor does the background section of the current application elsewhere describe such features. Accordingly, Applicants respectfully submit that the features of claim 28 are not disclosed by AAPA, and

request that Examiner remove the rejection to claim 28 or provide a reference that teaches the features recited in this claim.

### **Rejections Under 35 U.S.C. § 103**

Claim 34 is rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA, in view of Cusson and in further view of Official Notice (hereinafter, "Official Notice"). Regarding the rejection to claim 34, Examiner has taken Official Notice that the features of claim 34 are well known in the art. Applicants note that Official Notice is only proper in rare circumstances. The MPEP states that Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art, are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute." (See MPEP, 2144.03). Applicants respectfully submit that the language of claim 34 is not well known in the art, and does not satisfy the criteria for Official Notice. Therefore, Applicants respectfully request that Examiner explicitly cite a reference teaching the limitations of claim 34 if Examiner continues to maintain the rejection against claim 34.

Claims 31, 36, 40 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA, in view of Cusson and in further view of Ward (U.S. Patent No. 6,526,411). Claim 37 is rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA, in view of Cusson and in further view of Ward with Official Notice. Ward teaches a system and method for creating dynamic playlists. (Ward, Abstract). However, Ward fails to teach or suggest "sending said representation to at least one Second Tier identification server if said representation is similar to

the previously received unidentified representation, wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the at least one Second Tier identification server,” or “if said received representation is not a new representation, sending said received representation to a Second Tier Identification server for identification, wherein said received representation is not sent to the at least one Second Tier identification server if said received representation is a new representation.” Accordingly, Ward fails to teach or suggest the features of claims 1, 30, 33, 39 and 42 that are missing from Cusson. Applicants respectfully submit that claims 1, 30, 33, 39 and 42, and their corresponding dependent claims, are patentable over the combination of Cusson and Ward, and request that the rejection under 35 U.S.C. §103(a) be withdrawn.

## **Conclusion**

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant respectfully requests the withdrawal of the rejections and submits that pending claims 1-45 are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Benjamin Kimes at (408) 720-8300.

Respectfully submitted,  
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